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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PAUL HAYWARD KELLY, EDMUND SCOTT RICHARDSON,
and TERRING M. WARE

Appeal 2009-015318
Application 10/678,155
Technology Center 3600

Before WILLIAM F. PATE III, MICHAEL W. O'NEILL, and
KEN B. BARRETT, *Administrative Patent Judges*.

O'NEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Paul Hayward Kelly et al. (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-10, 14-17, 28, and 33 under 35 U.S.C. § 103(a) as being unpatentable over Wittern (US 6,302,293 B1, iss. Oct. 16, 2001), Thompson (US 2,359,398, iss. Oct. 3, 1944), and Percy (US 5,651,476, iss. Jul. 29, 1997) and claims 11-13, 18-27, and 29-32 under 35 U.S.C. § 103(a) as being unpatentable over Wittern, Thompson, Percy, and Newbury (US 4,498,584, iss. Feb. 12, 1985). We have jurisdiction under 35 U.S.C. § 6(b). We REVERSE.

The Invention

The claims on appeal relate to an integrated column wall for a vending machine.

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

> 1. A vending machine comprising:
>
> a cabinet frame including top, bottom, side and rear walls that collectively define a central cavity;
>
> a door pivotally mounted to the cabinet frame, said door being selectively movable between an open condition, wherein access to the central cavity is permitted for loading of product containers into the vending machine, and closed condition, wherein dispensing of product containers is permitted; and
>
> a plurality of column walls arranged within the cabinet frame and separating the central cavity into a plurality of product stack areas, each of said plurality of column walls being formed from a material sheet having top, bottom and side edges that define a substantially planar wall surface, said wall surface including a plurality of integrally formed stiffening elements extending between the side edges, and an integrally formed alignment member, wherein
>
> the stiffening members minimize bowing of the plurality of column walls under a weight of product containers,
>
> the integrally formed alignment member provides for proper positioning of product containers within the product stack areas for dispensing from the vending machine, and

> at least one of the plurality of stiffening elements comprises a decoupling member isolating a first area of the column wall from a second area of the column wall to minimize forces in the first area from being transferred to the second area.

OPINION

We have carefully reviewed the Examiner's rejections on appeal in light of the arguments of the Appellants' and Examiner's response. As a result of this review, we have reached the conclusion that the applied prior art does not establish the prima facie obviousness of claims 1-33. Our reasons follow.

Wittern explains that consumers demand for more selections has resulted in manufactures of vending products to provide different sizes and shapes of vendable items. Col. 1, ll. 27-41. Wittern discloses that vending machines are regularly of a certain housing size, and thus are limited to the number of columns per machine. Col. 1, ll. 50-52.

Wittern discloses a solution to increased consumer demand is to provide two stacks of differing vendable products in one column of the vending machine. The problem to such a solution is maintaining the two stacks in their generally vertical orientation for smooth dispensing. Wittern discloses a solution for this problem is to provide for adjustability with a retaining member that can move from a first position to a second position. Col. 1, l. 60 to Col. 3, l. 3.

Wittern provides in each vertical sidewall 20A-H four toothed tracks 32, 34, 36, and 38. Col. 4, ll. 36-42. There is no persuasive evidence that these toothed tracks are formed outside the plane of the vertical sidewall. As such, we find these toothed tracks are in the plane of the vertical sidewall and further find that, because of the teeth projecting upward from the bottom of the track, these openings in the vertical sidewalls would concentrate stress. Such a geometric discontinuity would be a stress riser, and as such, would not minimize bowing or forces being transferred due to the weight of the vendable products stacked between a pair of vertical walls.

Wittern discloses the toothed tracks permit the retainers with the appropriate receiver member to be positionably adjusted along the tracks. For instance, a latch mechanism 40 for front retainer 28 includes a receiver member 42 that is adjustably positionable along tracks 34 and 38 at the upper and lower ends. At the opposite edge of retainer 28, a pivot includes pivots 56A and 56B in receiver member 42 (see Fig. 7) which cooperate with pivot member 58 that is adjustably positionable along tracks 34 and 38 of sidewall 20B (see Fig. 11) such that the front retainer can pivot between open and closed positions. Col. 4, ll. 43-59; Figs. 1 and 2. Accordingly, to accommodate different sizes, types, and shapes of vendable products, back wall 26 and retainer 28 are adjustable forwardly and rearwardly to set the distance between them and the middle separators 30A and 30B. The forward and rearward change in depth is accomplished by having the aforementioned adjustable connections along toothed tracks 32 and 36 for back wall 26 and toothed tracks 34 and 38 for front retainer 28. Col. 5, ll. 34-40.

Thompson discloses a vending machine that is particularly designed to vend sanitary napkins. Pg. 1, left column, ll. 27-28. The Examiner focused on the construction of the shelves 34. Thompson discloses each shelf 34 is formed by stamping, in order to accommodate the size of the dispensed article, and formed with a peripheral bead 35 and diagonally extending ribs 36 which serve to reinforce the shelf 34. Pg. 2, left column, ll. 6-20.

Given the above findings of fact, we agree with the Appellants that the Examiner's Answer assumes that the type of "hole" that is shown in Wittern is equivalent to the claimed decoupling member claimed by Appellants. Reply Br. 2. In other words, the Examiner asserts an inherency argument that Wittern's track is inherently equivalent to the Appellants' decoupling member since both are "holes." The Examiner appears to infer that since Appellants' decoupling member is a "hole" and the Appellants have disclosed that this "hole" is able to isolate the first area of the column wall from a second area of the column wall in order to minimize forces in the first area from being transferred to the second area and Wittern discloses "holes" in column walls, then Wittern's "holes" inherently isolate the first area of the column wall from a second area of the column wall in order to minimize forces in the first area from being transferred to the second area. However, as we found above, a person of ordinary skill in the art would understand Wittern's "holes" to be stress risers, and thus the first areas to undergo bowing when the force from the weight of the product containers is imparted on the column walls. Moreover, we find no persuasive evidence that Wittern's "holes" have any aspect of them to effectively decouple one area of the column wall from another in order to minimize forces from being transferred between two areas.

Turning to the Examiner's reliance on Thompson's teachings, we agree with the Examiner that Thompson teaches stiffening elements based on Thompson disclosing the bead 35 and ribs 36 reinforce the shelf 34. However, again, there is no persuasive evidence that these "stiffening elements" decouple a first area from a second area to minimize forces in the first area from being transferred to the second area. Further, Thompson's shelves are designed to support sanitary napkins, and as such, any reinforcement provided is minimal when compared to the reinforcement needed to minimize bowing of the plurality of column walls due to the weight of product containers as disclosed in the Appellants' Specification and Wittern.

CONCLUSION

Accordingly, we conclude that the Examiner does not have a reasonable basis with rational underpinnings as to how the teachings of Wittern and Thompson could be combined to render the claimed subject matter prima facie obvious. The only suggestion for providing stiffening members to minimize bowing along with a decoupling member to isolate two areas in order minimize forces from transferring between those areas appears to come from the Appellants' disclosure. The Examiner has not relied on Percy or Newbury for any teaching that would remedy the deficiency in the underlying rejection of claims 1-9, 14-17, and 28 based on Wittern and Thompson as set forth *supra*. Therefore, we are constrained to reverse the rejections under 35 U.S.C. § 103(a).

DECISION

The Examiner's decision to reject claims 1-10, 14-17, 28, and 33 under 35 U.S.C. § 103(a) as being unpatentable over Wittern, Thompson, and Percy and claims 11-13, 18-27, and 29-32 under 35 U.S.C. § 103(a) as being unpatentable over Wittern, Thompson, Percy, and Newbury is reversed.

REVERSED

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